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IN THE SUPREME COURT OF ARIZONA

In the Matter of	)	
	)	Arizona Supreme Court No. _____
THE ARIZONA RULES	)	
OF CRIMINAL PROCEDURE	)	PETITION TO AMEND RULE 31.17(c)(1),
	)	ARIZONA RULES OF CRIMINAL
	)	PROCEDURE
_____	)	

**PETITION TO AMEND THE ARIZONA RULES OF CRIMINAL PROCEDURE**

Pursuant to Rule 28, Rules of the Supreme Court, the Arizona Supreme Court Staff Attorneys' Office petitions the Court to amend the Arizona Rules of Criminal Procedure, as reflected in the attachment hereto.

**I. BACKGROUND**

Arizona Revised Statutes § 13-759(A) provides:

A. After a conviction and sentence of death are affirmed and the first post-conviction relief proceedings have concluded, the supreme court shall issue a warrant of execution that authorizes the director of the state department of corrections to carry out the execution thirty-five days after the supreme court's mandate or order denying review or upon motion by the state. The supreme court shall grant subsequent warrants of execution on a motion by the state. The time for execution shall be fixed for thirty-five days after the state's motion is granted.

Rule 31.17(c)(1) and (2), Ariz. R. Crim. P., provides:

(1) *Initial Execution Warrant.* After a conviction and sentence of death are affirmed and the first post-conviction relief proceeding pursuant to Rule 32.4(a) has concluded by the denial of a petition for review filed pursuant to Rule 32.9(c) or, if no petition for review has been filed, upon the filing of a notice by the state that the time for filing such petition has expired,

the Supreme Court shall fix a twenty-four hour time period for execution of the sentence and shall issue a warrant of execution.

(2) *Subsequent Execution Warrant.* In the event the warrant is stayed by any court beyond the time period fixed for the execution of sentence, the Supreme Court shall issue subsequent warrants of execution upon motion by the state.

Pursuant to the statute and rule, if the superior court denies the first Rule 32 petition for post-conviction relief in a capital case and the Arizona Supreme Court denies review, the Court issues a warrant of execution. The Court's practice is to issue the warrant on the same date that it denies the petition for review. The Clerk of the Supreme Court sends a certified copy of the warrant to the Director of the Arizona Department of Corrections and the Warden of the Arizona State Prison at Florence, and sends e-mail copies to numerous other persons and agencies including counsel, superior court judges and staff, federal district court judges and staff, clerks of the superior court and federal courts, victims' representatives, the governor's general counsel and the Arizona Board of Executive Clemency. In addition, the Clerk of the Supreme Court gives notification by telephone calls to many of those persons and agencies.

Within a few days, the inmate under sentence of death ("petitioner") will initiate a habeas corpus proceeding in the United States District Court for the District of Arizona.<sup>1</sup> The District Court will then immediately issue an order staying the warrant of execution and directing its clerk to make telephone calls notifying the Director of the Arizona Department of Corrections, the Attorney General of the State of Arizona, the Clerk of the Arizona Supreme Court, and the Warden of the Arizona State Prison at Florence. The District Court also orders the United States Marshal to serve those individuals with a copy of the stay order, and a copy is sent to the petitioner. Shortly

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<sup>1</sup> Typically, the petitioner will file in the District Court a Motion to Stay Execution, a Motion for Appointment of Counsel, an Application to Proceed In Forma Pauperis, and a Statement of Intent stating his or her intent to file an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

thereafter, the District Court issues another order appointing habeas corpus counsel and scheduling a case management conference.

**II. PROPOSED AMENDMENT TO RULE 31.17(c)(1), ARIZ. R. CRIM. P.**

The first sentence of A.R.S. § 13-759(A) states: "After a conviction and sentence of death are affirmed and the first post-conviction relief proceedings have concluded, the supreme court shall issue a warrant of execution that authorizes the director of the state department of corrections to carry out the execution thirty-five days after the supreme court's mandate or order denying review *or upon motion by the state.*" (Emphasis added.) The proposed amendment would avoid the unnecessary issuance of a warrant of execution for those petitioners who promptly initiate habeas corpus proceedings in the federal district court. In light of the significant administrative costs associated with issuance of execution warrants, this will conserve judicial resources in both the state and federal courts. Therefore, the undersigned Staff Attorney respectfully requests that the Court adopt the proposed amendment as reflected in the attachment hereto.

DATED this \_\_\_\_ day of December, 2013.

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Donna M. Hallam  
Staff Attorney, Arizona Supreme Court

ATTACHMENT<sup>2</sup>

ARIZONA RULES OF CRIMINAL PROCEDURE

**Rule 31.17. Disposition and ancillary orders**

**a. - b.** [No change in text.]

**c. Fixing the Date of Execution After a Death Sentence Is Affirmed.**

(1) *Initial Execution Warrant.* ~~After a conviction and sentence of death are affirmed and the first post-conviction relief proceeding pursuant to Rule 32.4(a) has concluded by the denial of a petition for review filed pursuant to Rule 32.9(c) or, if no petition for review has been filed, upon the filing of a notice by the state that the time for filing such petition has expired, the Supreme Court shall fix a twenty four hour time period for execution of the sentence and shall issue a warrant of execution. Following affirmance of a sentence of death, and if the superior court denies the first Rule 32 petition for post-conviction relief and the Supreme Court denies the petition for review, the Supreme Court shall issue a warrant of execution upon the filing of a notice by the state that the defendant has not initiated habeas corpus proceedings in federal district court within fifteen days after review is denied. If no Rule 32 petition for post-conviction relief or petition for review is filed, the Supreme Court shall issue a warrant of execution upon the filing of a notice by the state that the time for filing such petition has expired.~~

(2) *Subsequent Execution Warrant.* ~~In the event the warrant is stayed by any court beyond the time period fixed for the execution of sentence, the~~ The Supreme Court shall issue subsequent warrants of execution upon motion by the state.

(3) *Date and Time of Execution.* [No change in text.]

(4) *Return on Warrant.* [No change in text.]

**d. - e.** [No change in text.]

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<sup>2</sup> Additions in text are indicated by underscoring and deletions from text are indicated by strikeouts.